

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

ALYN GARY ANDERSON, M.D.)

Case No. 800-2017-031071

**Physician's and Surgeon's)
Certificate No. A 25674)**

Respondent)

DECISION


The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 12, 2019.

IT IS SO ORDERED June 14, 2019.

MEDICAL BOARD OF CALIFORNIA

By:



**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
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3 TESSA L. HEUNIS
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 **ALYN GARY ANDERSON, M.D.**
16 **17822 Beach Boulevard, Ste. 166**
17 **Huntington Beach, CA 92647**

18 **Physician's and Surgeon's Certificate**
19 **No. A 25674**

20 Respondent.

Case No. 800-2017-031071

OAH No. 2019010379

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
25 of California (Board). She brought this action solely in her official capacity and is represented in
26 this matter by Xavier Becerra, Attorney General of the State of California, by Tessa L. Heunis,
27 Deputy Attorney General.

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2. Respondent Alyn Gary Anderson, M.D., is represented in this proceeding by attorney Raymond J. McMahon, Esq., whose address is: 5440 Trabuco Road, Irvine, California 92620.

3. On or about October 24, 1973, the Board issued Physician's and Surgeon's Certificate No. A 25674 to Alyn Gary Anderson, M.D. (Respondent). The Physician's and Surgeon's Certificate No. A 25674 was in full force and effect at all times relevant to the charges and allegations brought in Accusation No. 800-2017-031071, and will expire on October 31, 2019, unless renewed.

JURISDICTION

4. On or about December 6, 2018, Accusation No. 800-2017-031071 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on or about December 6, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-031071 is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2017-031071. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 800-2017-031071.

4 9. Respondent agrees that his Physician's and Surgeon's Certificate No. A 25674 is
5 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
6 in the Disciplinary Order below.

7 **CONTINGENCY**

8 10. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the
9 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
10 submitted to the Board for its consideration in the above-entitled matter and, further, that the
11 Board shall have a reasonable period of time in which to consider and act on this Stipulated
12 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
13 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
14 prior to the time the Board considers and acts upon it.

15 11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
16 and void and not binding upon the parties unless approved and adopted by the Board, except for
17 this paragraph, which shall remain in full force and effect. Respondent fully understands and
18 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
19 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
20 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify
21 the Board, any member thereof, and/or any other person from future participation in this or any
22 other matter affecting or involving Respondent. In the event that the Board does not, in its
23 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
24 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
25 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
26 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
27 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any

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1 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
2 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

3 **ADDITIONAL PROVISIONS**

4 12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
5 to be an integrated writing representing the complete, final and exclusive embodiment of the
6 agreements of the parties in the above-entitled matter.

7 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
8 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
9 signatures thereto, shall have the same force and effect as the originals.

10 14. In consideration of the foregoing stipulations, the parties agree that the Board may,
11 without further notice or opportunity to be heard by Respondent, issue and enter the following
12 Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 **A. PUBLIC REPRIMAND**

15 IT IS HEREBY ORDERED that Alyn Gary Anderson, M.D., Physician's and Surgeon's
16 Certificate No. A 25674, shall be and hereby is publicly reprimanded pursuant to California
17 Business and Professions Code section 2227, subdivision (a)(4). This public reprimand is issued
18 in connection with allegations that Respondent committed repeated negligent acts and failed to
19 maintain adequate and accurate records regarding his care, treatment, and prescribing of
20 controlled substances to a patient, as set forth in Accusation No. 800-2017-031071.

21 **B. PRESCRIBING PRACTICES COURSE**

22 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
23 course in prescribing practices approved in advance by the Board or its designee. Respondent
24 shall provide the approved course provider with any information and documents that the approved
25 course provider may deem pertinent. Respondent shall participate in and successfully complete
26 the classroom component of the course not later than six (6) months after Respondent's initial
27 enrollment. Respondent shall successfully complete any other component of the course within
28 one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense

1 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
2 licensure.

3 A prescribing practices course taken after the acts that gave rise to the charges in the
4 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
5 or its designee, be accepted towards the fulfillment of this condition if the course would have
6 been approved by the Board or its designee had the course been taken after the effective date of
7 this Decision.

8 Respondent shall submit a certification of successful completion to the Board or its
9 designee not later than 15 calendar days after successfully completing the course, or not later than
10 15 calendar days after the effective date of the Decision, whichever is later.

11 **C. MEDICAL RECORD KEEPING COURSE**

12 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
13 course in medical record keeping approved in advance by the Board or its designee. Respondent
14 shall provide the approved course provider with any information and documents that the approved
15 course provider may deem pertinent. Respondent shall participate in and successfully complete
16 the classroom component of the course not later than six (6) months after Respondent's initial
17 enrollment. Respondent shall successfully complete any other component of the course within
18 one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense
19 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
20 licensure.

21 A medical record keeping course taken after the acts that gave rise to the charges in the
22 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
23 or its designee, be accepted towards the fulfillment of this condition if the course would have
24 been approved by the Board or its designee had the course been taken after the effective date of
25 this Decision.

26 Respondent shall submit a certification of successful completion to the Board or its
27 designee not later than 15 calendar days after successfully completing the course, or not later than
28 15 calendar days after the effective date of the Decision, whichever is later.

ACCEPTANCE

I, Alyn Gary Anderson, M.D., have carefully read this Stipulated Settlement and Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently, and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No. A 25674.

I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon formal acceptance by the Board, I shall be publically reprimanded by the Board and shall be required to comply with all of the terms and conditions of the Disciplinary Order set forth above. I also fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and will subject my Physician's and Surgeon's Certificate No. A 25674 to disciplinary action.

DATED:

4/26/2019

Alyn Gary Anderson
ALYN GARY ANDERSON, M.D.
Respondent

I have read and fully discussed with Respondent Alyn Gary Anderson, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

4/26/2019

Richard J. McMahon
RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: April 26, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-031071

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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2017-031071

**Alyn Gary Anderson, M.D.,
17822 Beach Boulevard, Ste. 166
Huntington Beach, CA 92647**

ACCUSATION

**Physician's and Surgeon's
Certificate No. A 25674,**

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 24, 1973, the Board issued Physician's and Surgeon's Certificate No. A 25674 to Alyn Gary Anderson, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“...”

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“...”

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1 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent
2 acts or omissions. An initial negligent act or omission followed by a separate and distinct
3 departure from the applicable standard of care shall constitute repeated negligent acts.

4 “(1) An initial negligent diagnosis followed by an act or omission medically
5 appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

6 “(2) When the standard of care requires a change in the diagnosis, act, or omission
7 that constitutes the negligent act described in paragraph (1), including, but not limited to, a
8 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs
9 from the applicable standard of care, each departure constitutes a separate and distinct
10 breach of the standard of care.

11 “...”

12 6. Section 2266 of the Code states:

13 “The failure of a physician and surgeon to maintain adequate and accurate records
14 relating to the provision of services to their patients constitutes unprofessional conduct.”

15 7. Section 2241.5 of the Code states:

16 “(a) A physician and surgeon may prescribe for, or dispense or administer to, a person
17 under his or her treatment for a medical condition dangerous drugs or prescription
18 controlled substances for the treatment of pain or a condition causing pain, including, but
19 not limited to, intractable pain.

20 “(b) No physician and surgeon shall be subject to disciplinary action for prescribing,
21 dispensing, or administering dangerous drugs or prescription controlled substances in
22 accordance with this section.

23 “(c) This section shall not affect the power of the board to take any action described
24 in Section 2227 against a physician and surgeon who does any of the following:

25 “(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence,
26 repeated negligent acts, or incompetence.

27 “...”

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1 “(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation
2 of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section
3 11210) of Division 10 of the Health and Safety Code.

4 “(d) A physician and surgeon shall exercise reasonable care in determining whether a
5 particular patient or condition, or the complexity of a patient’s treatment, including, but not
6 limited to, a current or recent pattern of drug abuse, requires consultation with, or referral
7 to, a more qualified specialist.

8 “...”

9 8. Section 4021 of the Code states:

10 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with
11 Section 11053) of Division 10 of the Health and Safety Code.”

12 9. Section 4022 of the Code states:

13 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-
14 use in humans or animals, and includes the following:

15 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
16 without prescription,’ ‘Rx only,’ or words of similar import.

17 “...”

18 “(c) Any other drug or device that by federal or state law can be lawfully dispensed
19 only on prescription or furnished pursuant to Section 4006.”

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Repeated Negligent Acts)**

22 10. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
23 by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his
24 care and treatment of Patient A,¹ as more particularly alleged hereinafter:

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27 _____
28 ¹ “Patient A” is used to protect the patient’s privacy.

1 11. Respondent was the primary care physician of Patient A from 2008 through
2 approximately February 23, 2013 ("the treatment period").²

3 12. During the treatment period, Patient A also saw a psychiatrist and a pain management
4 physician from time to time. However, respondent was the main prescriber of Patient A's
5 medications.

6 13. A CURES³ report, shows that from at least on or about November 29, 2010, through
7 the end of the treatment period, respondent routinely prescribed to Patient A a combination of
8 Hydrocodone Bitartrate Acetaminophen⁴ (at least six (6) 325mg/10mg tablets per day), and
9 Alprazolam⁵ (at least four (4) 2mg tablets per day). In addition, respondent prescribed to
10 Patient A either Oxycodone HCL-Acetaminophen⁶ 500mg/7.5mg, or Hydromorphone HCL⁷ 2mg.
11 From at least on or about July 30, 2012, through the end of the treatment period, respondent
12 added a prescription for Patient A for Carisoprodol⁸ (at least three (3) 350mg tablets per day).

13 14. A review of Respondent's medical records for Patient A shows diagnoses listed with
14 no plans to address them, and no rationale provided for actions taken.

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16 ² Conduct occurring outside the statute of limitations period is for informational purposes
17 only and is not alleged as a basis for disciplinary action.

18 ³ Controlled Substance Utilization Review and Evaluation System, compiled by the
19 California Department of Justice, Bureau of Criminal Identification and Investigative Services as
part of its Prescription Drug Monitoring Program.

20 ⁴ Hydrocodone Bitartrate Acetaminophen is a Schedule III controlled substance pursuant
21 to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to
Business and Professions Code section 4022.

22 ⁵ Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
23 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
section 4022.

24 ⁶ Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
25 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
section 4022. It is combined with acetaminophen in medications such as Percocet.

26 ⁷ Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety
27 Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions
Code section 4022.

28 ⁸ Carisoprodol is a Schedule IV drug under the Uniform Controlled Substances Act, and a
dangerous drug pursuant to Business and Professions Code section 4022.

1 15. Patient A's records contain no explicit treatment plan, with stated objectives, by
2 which the plan can be evaluated and/or adapted. Instead, Respondent appears to have changed
3 Patient A's pain medication periodically, without discussing or contemplating other treatment
4 modalities.

5 16. Respondent's medical records for Patient A also give no indication that Respondent
6 discussed with Patient A the risks and benefits of the controlled substances he prescribed, versus
7 other treatment modalities.

8 17. On or about February 12, 2013, Patient A was hospitalized for alprazolam
9 withdrawal. According to the hospital records, Patient A had been taking extra alprazolam due to
10 stressful situations at home, and ran out of the medication two to three days before admission.
11 Patient A was discharged from the hospital on or about February 13, 2013, with a prescription for
12 30 x alprazolam 2mg tablets.

13 18. After discharge, Patient A followed up with respondent on or about February 18,
14 2013. Respondent did not discuss with Patient A her misuse of alprazolam and/or address her
15 suboptimal management of her anxiety that led to that misuse. Respondent did not refer Patient A
16 back to her psychiatrist, but gave her a new prescription for 120 x alprazolam 2 mg tablets.
17 According to a CURES report for the relevant period, Patient A filled this new prescription on or
18 about February 20, 2013.

19 19. On or about February 23, 2013, there were 79 of the 120 alprazolam tablets
20 remaining.

21 20. Respondent committed repeated negligent acts in his care and treatment of Patient A
22 which include, but are not limited to:

- 23 (a) Failing to document a treatment plan;
- 24 (b) Failing to provide informed consent;
- 25 (c) Failing to address Patient A's misuse of alprazolam, modify treatment accordingly
26 and/or promptly refer back to psychiatry; and
- 27 (d) Failing to maintain accurate and adequate records.

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